

b.) Remarks

Claim 98 has been amended to recite the features of claim 102.

Accordingly, claims 102, 112, 115 and 116 have been cancelled as superfluous and claims 103-105, 113 and 119 are amended to maintain their dependency. Accordingly, no new matter has been added.

Claims 98, 102-105 and 108-119 are rejected under 35 U.S.C. §103(a) as being unpatentable over Tabor (U.S. Patent No. 6,482,448) in view of Hastings (U.S. Patent Publication No. 2001/0041187), Miller (U.S. Patent No. 6,019,999), Ostlund (U.S. Patent No. 5,550,166) Shimizu (U.S. Patent No. 6,004,926), Goldberg (*Diabetes*, Vol. 28, Supp. 1 (1979) 18-24) and Goldberg et al. (*Med. Sci. Sports.*, Vol. 7, No. 3 (1975) 185-98).

The Examiner's bases of rejection is set forth at pages 2-7 of the Office Action.

This rejection is respectfully traversed. Prior to setting forth their bases for traversal, however, Applicants would briefly like to discuss the salient features of the present invention and *inter alia* its patentable nature over the prior art.

As the Examiner is well-aware, the present invention relates to a method of supplementing a diet to enhance muscle size or strength by administering an admixture of (i) powdered or granular milk whey protein or milk whey peptides, (ii) a particular compound that mimics or enhances insulin activity<sup>1</sup> and a particular compound that increases nitric oxide production<sup>2</sup>

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<sup>1</sup> Myo-inositol, d-myo-inositol, cis-inositol, epi-inositol, allo-inositol, muco-inositol, neo-inositol, scyllo-inositol, d-chiro-inositol, l-chiro-inositol or d-pinitol.

<sup>2</sup> Ginseng, L-arginine, N-acetyl cysteine, glucomannan or folic acid

As such, Applicants respectfully wish to explain, at the outset, the cited art does not provide a *prima facie* case of obviousness, even taken collectively:

	Powdered or Granular Milk Whey	Inositol or Pinitol	Ingredient Increasing Nitric Oxide Production
Tabor	—	—	—
Hastings	—	—	+
Miller	—	—	—
Ostland	—	+	—
Shimizu	—	—	—
Goldberg	—	—	—
Goldberg et al.	—	—	—

That is to say, none of the cited art teaches or suggests any composition (let alone Applicants' process) containing either powdered or granular milk whey protein, or powdered or granular milk whey peptides. Indeed, the only reference relied upon by the Examiner as explicitly teaching milk whey is Miller. However, Miller teaches a timed release protein supplement in which dairy whey protein is encased in liposomes (see col 5, lines 65-67 and col 7, lines 40-45). As is well-understood by those of ordinary skill in this art, Miller's liposome-encased whey proteins are neither powdered nor granular.

As to the remaining references, only Hastings mentions milk (the Examiner says Hastings "can be mixed with juice, water, milk", see Office Action at page 2, lines 18-19. However, any whey present in the milk is plainly not granular or powdered. Moreover, no other reference is cited in the Office Action as showing milk or milk protein, let alone milk whey protein, much less powdered or granular milk whey protein.

In view of the above amendments and remarks, Applicants submit that all of the Examiner's concerns are now overcome and the claims are now in allowable condition. Accordingly, reconsideration and allowance of this application is earnestly solicited.

Claims 98, 103-105, 108-111, 113, 114 and 117-119 remain presented for continued prosecution.

Applicants' undersigned attorney may be reached in our New York office by telephone at (212) 218-2100. All correspondence should continue to be directed to our below listed address.

Respectfully submitted,

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